

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

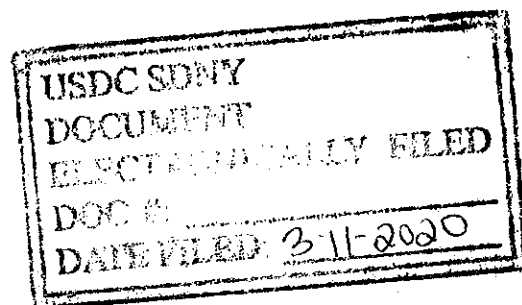
SHANE BECHLER,

Plaintiff,

-against-

MVP GROUP INTERNATIONAL, INC.  
et al.,

Defendants.



16 Civ. 8837 (LAP)

ORDER

LORETTA A. PRESKA, Senior United States District Judge:

The Court is in receipt of Mr. Liebowitz's letter dated March 9, 2020 (dkt. no. 30) where, in response to the Court's inquiry about the status of the case, Mr. Liebowitz requested a discovery schedule. Defendants pointed out that there has been no activity on the docket for a period of some 18 months and asked the Court to dismiss the case. In the alternative, Defendants request leave to file a motion for dismissal under Rule 41(b) and for summary judgment under Rule 56.

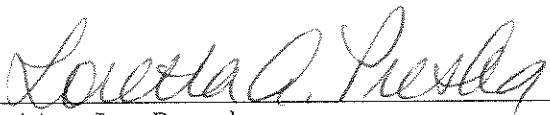
While the court is sympathetic to Defendants' position and notes that the Court of Appeals has stated that while prior notice is not required for a dismissal for failure to prosecute, See Lyell Theatre Corp. v. Loews Corp., 682 F.2d 37, 42 (2d Cir. 1982) (citing Link v. Wabash R.R. Co., 370 U.S. 626, 632 (1962)), in practice, cases where prior notice of dismissal for failure to prosecute has not been given are often reversed, e.g. Lewis v.

Frayne, 595 Fed. App'x 35, 37 (2d Cir. 2014); Martens v. Thomann, 273 F.3d 159, 181 (2d Cir. 2001). Thus, although the Court will not prevent Defendants from moving under Rule 41(b), such a motion is unlikely to be successful.

With respect to Defendants' request to move for summary judgment, the Court's Individual Rules require a pre-motion letter, which has not been submitted. The Court also notes that no discovery has been taken. If Defendants wish to move for summary judgment at this stage, they shall file a pre-motion letter as required in the Court's Individual Rules, Section 2(A). Counsel shall confer and inform the Court by letter no later than March 20 how they propose to proceed.

**SO ORDERED.**

Dated: New York, New York  
March 11, 2020

  
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Loretta A. Preska  
Senior U.S. District Judge